**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**MAC. App. No. 1014-16/2006**

Judgment delivered on: November 12, 2007

Smt. Veena @ Meena & Ors. ..... Appellants
Through: Mr.O.P. Mannie, Advocate.

versus

Shri Janardan & Ors. ..... Respondents
Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

**KAILASH GAMBHIR, J. Oral:**

Even on the last date, nobody was present for respondent No.3 New India Assurance Co. Ltd. Respondent No.3 is proceeded ex-parte. Since respondent No.3 has not shown any interest to contest the present appeal, therefore, the present appeal is taken up for final hearing.

The present appeal is preferred against the award

dated 23.8.2006 of the Motor Accident Claims Tribunal. The brief facts of the case are that:

On 14.5.2005 at about 8.45 a.m., Shri Bhagwan Dass was travelling on his cycle and when he reached and stopped at the red light of Vidya Marg, Pankha Orad Crossing, a bus bearing registration No. DL 1P 1146, being driven by respondent No.1, came from behind at a very high speed in a rash and negligent manner and hit Shri Bhagwan Dass, as a result of such a forceful impact, he fell on the road and received fatal injuries. A claim petition was filed on 28.5.2005 and award was passed by the learned Motor Accident Claims Tribunal on 23.8.2006. Aggrieved with the said award the present appeal is filed by the appellants.

Mr.O.P. Mannie, counsel for the appellant states that the appellant is aggrieved only on account of the fact that the Tribunal has not taken into consideration the future cost neutralization factor although the minimum wages of unskilled worker as fixed under the Minimum Wages Act for the relevant period were taken into consideration. The appellant is also aggrieved due to the fact that the Tribunal has granted a meagre amount of Rs.5,000/- towards loss of consortium. Counsel for the appellant contends that since the deceased is survived by his

widow of a very young age besides his minor son and grown up daughter, therefore, minimum amount of Rs.50,000/- should have been awarded towards loss of consortium.

I have heard learned counsel for the appellant and perused the records. The deceased in the present case was working as a daily wager in the MCD and, therefore, the Tribunal referred to the wages under the Minimum Wages Act for determining the income of the deceased at Rs.3,100/-. The date of accident in the present case is 14.5.2005 and as per the minimum wages, the applicable wages for unskilled labourer in May 2005 were Rs.3044.90 which were taken by the Tribunal as Rs.3,100/-. The Tribunal has not applied the criteria laid down in **Sarla Dixit Vs.Balwant Yadav & Ors.,** *1996 ACJ 581 (SC)* in view of the judgment of the Apex Court reported in **Bijoy Kumar Dugar Vs. Bidya Dhar Dutta,** *(2006) 3 SCC 242*. However, this Court has already taken a view that the future prospects cannot be treated at par with increase in minimum wages as fixed under the Minimum Wages Act. The increase in minimum wages for the reason that the inflation eats the purchasing power of the rupee and to neutralise the falling power of rupee wages are increased . The increase in the minimum wages are revised by the

Government keeping in view the inflationary trends and cost index and, therefore, the increase in minimum wages are required for a person to sustain himself at the minimum level of subsistence. Since the accident in the present case had occurred on 14.05.2005 and the multiplier of 11 has been applied, therefore, the wages that the deceased would have earned for this period of 11 years has to be taken into consideration. The said 11 years period from the date of accident would expire in the year 2016. Therefore, the increase in index for the past 10 years can be taken into consideration. Counsel for the appellant after referring to the Minimum Wages Act states that minimum wages for unskilled worker as on 01.02.1995 were Rs.1,495/- and after a period of 10 years, they became double to the said amount i.e. Rs.3044.90. Since the minimum wages have doubled in the past 10 years as per the Minimum Wages Act, therefore, safely the said increase at least can be taken in view as a future increase of double Minimum Wages under the Minimum Wages Act. The said wages of Rs.3,044.90/- which have been taken into consideration as Rs.3,100/- for the year 2005 would come to Rs.6,200/- and taking an average of the same, the monthly income of the deceased would come to Rs.4,650/- p.m. Deducting 1/3rd

expenses from the same, the average monthly dependancy would come to Rs.3,100/- per month and annual dependancy would come out as Rs.37,200/- and after the same is multiplied by the multiplier of 11, the total yearly loss of dependancy of the appellant would come to Rs.4,09,200/-. Accordingly the compensation towards the loss of dependancy stands enhanced from Rs.2,72,800/- to Rs.4,09,200/-.

On the second contention of counsel for the appellant, I also find myself in agreement with counsel for the appellant that a very meagre amount of Rs.5,000/- has been awarded by the Tribunal towards loss of consortium. In the judgment cited by counsel for the appellant in **Mohinder Kaur & Ors. Vs. Hira Nand Sindhi (Ghoriwala) & Anr.**, *2007 ACJ 2123,* the Supreme Court has upheld the decision of the High Court and granted Rs.50,000/- for loss of consortium. Since the High Court did not grant the interest on the said amount, therefore, the matter was taken by the claimants to the Apex Court in Special Leave Petition. The Hon'ble Supreme Court has not only upheld the said amount towards loss of consortium but has also awarded interest at the rate of 9% p.a. on the said amount from the date of filing of the petition. In view of the said decision of the Hon'ble Supreme

Court, I enhance the said amount to Rs.50,000/-. Accordingly the said amount of Rs.5,000/- towards loss of consortium stands enhanced to Rs.50,000/- which shall be paid by the respondents jointly and severally along with interest at the rate of 7.5% p.a. on the differential amount from the date of filing of the petition till realization. Counsel for the appellant states that respondent No.3 has already complied with the impugned award. Respondent No.3 shall be liable to pay the differential amount of Rs.1,81,400/- towards the loss of dependancy in addition to the amount of Rs.2,92,800/- already paid by respondent No.3. In addition to the said amount, respondent No.3 shall also be liable to pay an additional amount of Rs.45,000/- towards loss of consortium. Both the said differential amounts shall be paid by respondent No.3 along with upto date interest at the rate of 7.5% from the date of filing of the petition till final realisation.

With these directions, the appeal stands disposed of.

**November 12, 2007** **KAILASH GAMBHIR J.**
ga